

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF APPRENTICESHIP STANDARDS

08-21-92

In The Matter of the Addition of the Geographical Area of Santa Clara County to the Independent Roofing Contractors of California Unilateral Apprenticeship Training Committee, DAS File #19704, for the purpose of training roofing apprentices.

DECISION

INTRODUCTION

The Independent Roofing Contractors of California Unilateral Apprenticeship Training Committee, DAS File Number 19704 (hereinafter "Applicant"), an existing multi-employer unilateral roofing apprenticeship program covering Alameda, Contra Costa, Lake, Mendocino, Napa, San Francisco, San Mateo, Solano, Sonoma and Marin Counties proposes to add the geographical area of Santa Clara County. The existing Applicant program was approved by the Chief, DAS, April 10, 1991, an appeal to the California Apprenticeship Council (CAC) overturned the approval, but subsequent State Superior Court litigation placed the program in operation effective February 19, 1992. The Superior Court decision has been appealed to the State Court of Appeals by the CAC and the existing apprenticeship program in the area.

Currently, in Santa Clara County, the existing program, Santa Clara and San Benito Counties Roofing JATC, DAS File Number 09069 (hereinafter "Respondent") is operating. Labor Code Section

3075 provides that an apprenticeship training program may be approved "whenever the apprenticeship training needs justifies the establishment". During January of 1992, Applicant submitted a request to the Division of Apprenticeship Standards to expand the area of coverage for their apprenticeship training program. A copy of the Applicant's existing apprenticeship standards and the request to add Santa Clara County to their program was provided to the Respondent for review and comment, particularly on the following issues.

1. Whether the training needs in the proposed extended area will justify the approval of Applicant's apprenticeship program to train apprentices in the enlarged area; and,

2. Whether establishment of the proposed apprenticeship program would adversely affect or lower the existing prevailing conditions including training standards in the industry and area.

#### RESPONDENT'S POSITION

A single letter of comment dated April 3, 1992 was received from Mark S. Renner, an attorney with the law firm of Wylie, McBride, Jesinger, Sure & Platten, representing Respondents. The comment letter was in opposition to the Applicant's request on three issues, 1) a lack of justification for the additional roofing apprenticeship training program in Santa Clara County, 2) apprentice wages and benefits do not meet the level of the apprentice compensation in the existing program, 3) training standards would be lowered because the Applicant's standards specify 116 hours of related and supplemental instruction annually, compared to 144 hours recommended by the statute and 180 hours specified in the Respondent's Standards.

Attorney Renner's position relative to the needs requirement is that no evidence was presented to establish a need for training and that the Applicant lacked employers in the Santa Clara County area interested in training apprentices. He also stated that Hydrostorage eliminated the requirement that an employer agree to the JATC's standards as a condition of participating in the existing apprenticeship program. It is apparent to Mr. Renner that there is no need for additional training for roofing apprentices in the area as there have been no requests to the Respondents from employers in Santa Clara County to participate in their program even with that barrier eliminated.

Attorney Renner claims that all forms of apprentice compensation, wages, pension and health benefits in the Applicant's program are substantially lower, lack portability and, as a result, will contribute to a lowering of the standards in the area. He also states that the California Code of Regulations (CCR) Section 212.2 (a), requiring approval to be denied when it is found that "the existing prevailing conditions, including training standards would in any way be lowered or adversely affected", has not been met.

Lastly, he points out that the Applicant's program requires 116 hours of related instruction per year compared with 180 hours each year for the Respondent's program. This will amount to 100 fewer training hours over the term of apprenticeship and, as a result, will lower the standards.

#### REBUTTAL

The purpose of recognition of standards proposed by an apprenticeship committee is to develop a pool of skilled workers

for the segment of the industry represented by members of the Applicant's program. To deny Applicant's program expansion approval for the sole reason that there has been no showing that the existing program is not ready, willing and able to accommodate the training of additional roofing apprentices is ludicrous and would serve to frustrate the purpose of Applicant in seeking approval for their program in the first place. Conversely, at the Chief's hearing held July 11, 1990 for the purpose of allowing testimony and submission of documents relative to the approval of Applicant's program for the 10 Bay Area Counties and Santa Clara County (approval in Santa Clara County was eventually denied due a lack of a showing of employer interest) Dan Smith, co-chair of the Santa Clara/San Benito JAC (herein Respondent) testified that no apprentices would be dispatched to a non-signatory contractor who refused to sign the DAS 7 and comply with their standards. (RT 49:24-25.)

In any event, responding to the additional apprentice training needs issue, letters of commitment to participate in Applicant's program in Santa Clara County when approved have been received from five roofing contractors located within the county. These employers indicate that they employ approximately 100 journeylevel workers and anticipate that they will be able to offer employment to 25 to 40 apprentice roofers.

As previously mentioned, the Applicant's program is existing and operating successfully in the ten Bay Area counties. The April 10, 1991 approval by the Chief DAS, although overturned by the CAC, has been validated by the State Court system as meeting the requirements of an apprenticeship program. As the

Applicant's existing standards had been previously considered and approved by the Chief, critical comments as to the content of the standards are not relevant to the request for an additional area of operation. It goes without saying that the content of a program approved and operating in 10 counties would also be adequate and appropriate for operation in one other additional county. In addition, no convincing evidence was submitted that Applicant's request to enlarge their sphere of operations would lower or adversely affect the existing conditions.

Applicant was made aware of the differential in the related and supplemental instructional hours and although it doesn't seem to be that critical when compared to the the total apprentice training period of 3600 hours, a modification has been made. A letter has been received from the North Santa Clara County Regional Occupational Program, the provider of the related and supplemental instruction for the Applicant, agreeing to develop and participate in a 180 hour per year supplemental classroom instruction portion of Applicant's apprenticeship curricula for Santa Clara County. Applicant's existing standards presently reflect 166 hours per year, not 116 as alleged by Respondent.

#### CONCLUSION

Applicant has established a need for a parallel program in this area. Applicant wishes to provide for the future skilled work force of their segment of the industry by administering their own apprenticeship program in Santa Clara County. Additionally, persuasive evidence was not presented to substantiate the allegation that the proposed program would adversely affect or lower the existing prevailing conditions including training

standards in the industry and area. The objections to the standards that were raised by Respondent's attorney have been addressed and where appropriate modifications have been made.


Therefore, the application for approval of the Independent Roofing Contractors of California Unilateral Apprenticeship Training Committee to conduct roofing apprenticeship training in Santa Clara County is approved, subject to the same conditions that were imposed upon the approval of the program in the geographical area of the 10 Bay Area Counties:

1. Applicant shall make provisions to determine the qualifications of participating employers to train apprentices under the standards of the Unilateral program, including, but not limited to, the qualifications of the journeymen "on the job" instructors. Prior to indenturing apprentices in Santa Clara County, Applicant must register the qualifications of each journeyman who is intended to train apprentices as per Title 8, CCR, Section 205 (a) with the Chief, DAS. The journeyman register shall be maintained on a current basis.

2. In order to offer an apprentice training and supervision in all the work processes of the occupation, the Applicant shall adhere to a ratio of apprentices to journeymen no greater than one apprentice to one journeyman.

The approval date of applicant's standards will become effective for implementation on the date the approval becomes an Order of the California Apprenticeship Council.

Dated: E-21-92.

  
Gail Jesswein, Chief  
Division of Apprenticeship Standards